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COMMONWEALTH EDISON COMPANY	**:**	
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Petition to implement a competitive procurement process by establishing Rider CPP, Rider PPO-MVM, Rider TS-CPP and revising Rider PPO-MI	**:**	**Docket No. 05-0159**
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PETITION FOR REHEARING AND RECONSIDERATION
OF
THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO

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Now comes the BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO ("BOMA"), by its attorneys GIORDANO & NEILAN, LTD., and hereby submits to the Illinois Commerce Commission (the "Commission" or "ICC") this Petition for Rehearing and Reconsideration in this proceeding pursuant to Section 200.880 of the Commission's Rules of Practice.

On February 25, 2005, Commonwealth Edison Company ("ComEd") filed proposed tariff sheets with the Commission seeking, among other things, authority to utilize a competitive auction procurement process to acquire ComEd's full requirements for electricity supply. On January 24, 2006, the Commission issued its final order ("the Order") in this docket. The Order, among other things, (1) approves the descending clock, uniform price auction approach proposed by ComEd and rejects the descending clock, pay as bid auction approach proposed by BOMA witness Dr. Arthur B. Laffer; (2) approves ComEd's proposed Rider PPO-MVM, under which ComEd's proposed auction would be used as the method of determining the market value used in ComEd's statutorily required PPO tariff (220 ILCS 5/16-112(a)); (3) approves ComEd's proposal to offer customers in the 400 kilowatts ("kW")–1 megawatt ("MW") and 1–3 MW customer classes the CPP-A auction product rather than the CPP-B auction product; and (4) approves BOMA's proposal to create a separate subgroup of nonresidential space heating customers in Staff's rate mitigation plan which was adopted by the Order but, contrary to BOMA's proposal, limits the subgroup of nonresidential space heating customers to customers with less than 400 kW of peak demand. These four conclusions of the Order are in error and should be modified as requested below.

1. The Order's conclusion adopting ComEd's descending clock, uniform price auction approach is contrary to law, not supported by substantial evidence and against the manifest weight of the evidence. Under ComEd's descending clock, uniform price approach the auction would start at a high enough price that suppliers would bid to supply much more electricity than ComEd's full requirements. ComEd's auction manager would then "tick down" the bid price in a series of bidding rounds until the amount of supply being bid equalled ComEd's full requirements for electricity supply. At that point the auction would stop and the remaining bidders would win contracts to supply electricity to ComEd at the same uniform, "market clearing" price. Bidders would be limited to 35% of ComEd's full requirements for electricity supply. A key feature of ComEd's auction design, which ComEd euphemistically refers to as "transparency," is that ComEd's auction manager would inform the bidders of the amount of excess supply being bid by other bidders until near the end of the auction. (See ComEd Ex. 4.0; ComEd Revised Ex. 11.0; ComEd Revised Ex. 19.0).

In extensive written and oral testimony before the Commission, BOMA witness and world-renowned economist Dr. Arthur B. Laffer proposed a modification to ComEd's proposed auction procurement process. Under Dr. Laffer's approach, the auction would likewise begin at a high price which would attract excess supply and the price would then be reduced by the auction manager during each round of the auction. However, instead of stopping the auction when ComEd's full requirements were met, under Dr. Laffer's pay as bid approach the auction manager would continue to lower the price until no bidder was willing to bid at the price being quoted by the auction manager. The auction would then be stopped, and ComEd supply contracts would be awarded in ascending price order (with winning bidders to be paid the prices they bid, rather than a uniform, "market clearing" price) until ComEd's full requirements were met. To avoid facilitating implicit collusion by bidders on a high price, Dr. Laffer's approach would also eliminate ComEd's so-called "transparency"; that is, under Dr. Laffer's pay as bid approach bidders would not be informed of the amount of excess supply being bid by other bidders at any time during the auction and would not be informed when there was only enough electricity being bid to meet ComEd's full requirements. (See BOMA Ex. 1.0; BOMA Ex. 3.0)

In the Order, the Commission rejected Dr. Laffer's pay as bid approach and adopted ComEd's uniform, "market clearing" price approach on the grounds that the pay as bid auction is untried even though the Order recognized the appeal of Dr. Laffer's approach due to its claim of lower prices. (Order, pg. 105). The Commission's conclusion is contrary to applicable law, unsupported by substantial evidence and against the manifest weight of the evidence.

2. The Illinois Public Utilities Act ("PUA") requires that public utilities provide service to their customers at the least cost. (220 ILCS 5/8-401). The uniform, "market clearing" price auction format proposed by ComEd is not the least-cost method of electricity supply procurement because it prohibits bidders from bidding below the uniform, "market clearing" price at which ComEd stops the auction. In stark contrast to ComEd's uniform, market clearing price auction, Dr. Laffer's pay as bid approach insures that no price would be paid to any supplier in excess of the lowest price at which the supplier was willing to sell electricity to ComEd. (BOMA Ex. 1.0, pg. 11, ll. 256-257).

ComEd's uniform, "market clearing" price auction process is the same form of auction as that used by New Jersey's electric utilities. In fact, ComEd's auction designer, Dr. Chantale LaCasse, was part of the team that designed New Jersey's uniform, "market clearing" price auction procurement process. (ComEd Ex. 4.0, pg. 5, ll. 105-116; pg. 42, ll. 990-991). Dr. LaCasse admitted on cross examination in this proceeding that achievement of the lowest prices for consumers was not even a goal of the New Jersey auction, much less a legal requirement. (Joint Tr., pg. 81, ll. 7-18). As shown in Illinois Attorney General Exhibit 1.6, pp. 15-16 in this docket (attached as Attachment A to this Petition for Rehearing and Reconsideration) New Jersey's uniform price electricity supply procurement auction in 2005 resulted in 18.6% - 28.3% price increases for supply contracts to the state's utilities from 2004 to 2005.

3. The Order's rejection of Dr. Laffer's pay as bid approach on grounds that it is untried is not supported by substantial evidence and is against the manifest weight of the evidence in this case. BOMA presented evidence of several examples of pay as bid

auctions for electricity and other products that have already been successfully conducted. (BOMA Ex. 1.0; BOMA Ex. 3.0) Moreover, ComEd's own auction designer, Dr. LaCasse, testified that ComEd's proposed auction in this case and the descending clock auction now being used in New Jersey were both patterned after the Federal Communication Commission's ("FCC") spectrum auction, which is a pay as bid auction. (ComEd Ex. 4.0, pp. 3-4, ll. 72-86; pg. 11, ll. 235-246; Joint Trans., pg. 891, ll. 4-16). Furthermore, one of ComEd's other witnesses in this proceeding, Andrew Parece, recommended that a pay as bid approach be used by the electric utilities in Massachusetts because pay as bid pricing best accomplishes the goal of determining competitive supply prices. (ComEd Ex. 12.2, pg. 12; see also ComEd Tr., pg. 1197, ll. 13-18).

Perhaps most significantly, the regulatory agency overseeing the England and Wales electricity market replaced the uniform, "market clearing" price auction approach with the pay as bid method after they found that the uniform price approach facilitated the exercise of market power to maintain or increase electricity prices at the expense of consumers. (BOMA Ex. 1.0, pp. 8-9, ll. 164-194). As Dr. Laffer testified, during the first year of the pay as bid approach in England and Wales, annual prices for baseload electricity decreased by 20% and peaking power prices fell by 27%. (BOMA Ex. 1.0, pg. 9, ll. 191-205). The pay as bid auction format was subsequently implemented in electricity markets across the entire United Kingdom. (BOMA Ex. 3.0, pg. 23, ll. 529-532).

Contrary to the Commission's conclusion in the Order, the manifest weight of the evidence in this case shows that the pay as bid auction method is well-tested and has a long history of successful use. Accordingly, BOMA requests that the Commission revise the Order to adopt Dr. Laffer's pay as bid modification to ComEd's auction procurement process.

4. The Order's conclusion approving ComEd's proposed PPO-MVM tariff is contrary to law because it violates the requirement of 16-112(a) of the PUA that the market value used to determine charges in ComEd's statutorily required PPO tariff be a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy. (220 ILCS 5/16-112(a)).

The Order incorrectly rejects BOMA's argument that the Supplier Forward Contracts ("SFCs") that will be executed as a result of ComEd's auction process cannot be used to determine the market value in the PPO tariff because they are not exchange traded or other market traded futures contracts. (Order, pg. 224). The Commission bases its rejection of BOMA's argument on the grounds that the statute simply does not contain a requirement that futures contracts be exchange traded or other market traded to be used to determine the market value used for the PPO tariff. (Order, pg. 224). However, Section 16-112(a) plainly and expressly requires that any futures contract used in the determination of market value be "market traded" or "exchange traded." (220 ILCS 5/16-112(a)).

Accordingly, BOMA requests that the Commission revise the Order to find that ComEd's proposed Rider PPO-MVM does not comply with Section 16-112(a) and order ComEd to continue to offer its current Rider PPO-MI or alternatively a PPO determined by a neutral fact finder ("PPO-NFF") in order to comply with the PUA post-2006.

5. The Order's conclusion that the 400 kW-1 MW and 1-3 MW customer classes should be offered the CPP-A auction product rather than the CPP-B auction product is contrary to law. BOMA proposed that ComEd's CPP-B auction product be made available to customers in the 400 kW-1 MW and 1-3 MW customer classes if an auction procurement process is approved by the Commission. (BOMA Corr. Ex. 2.0, pg. 6, ll. 130-135; BOMA In. Br., pp. 17-19). The Order, however, concludes that the 400 kW-1 MW and 1-3 MW customer classes should be provided service under the CPP-A product as ComEd has proposed. (Order, pp. 123-124). This conclusion is contrary to law because it discriminates against the 400kW-1MW and 1-3MW customer classes in violation of Section 9-241 of the PUA. (220 ILCS 5/9-241).

ComEd's the 1-3 MW and 400 kW-1 MW classes of customers are similarly situated to ComEd's classes of smaller customer because they likewise have not been declared competitive. Therefore, the 1-3 MW and 400 kW-1 MW customer classes are entitled to the same price volatility mitigation provided by the CPP-B auction product that ComEd has offered to ComEd's smaller classes of customers. In order to avoid violating Section 9-241 of the PUA, the Commission should order that the 400kW-1MW and the 1-3MW customer classes be provided service under the CPP-B auction product if an auction process is implemented by ComEd.

6. The Order's conclusion limiting the application of Staff's rate mitigation plan to only those non-residential space heating customers eligible for ComEd's CPP-B auction product is contrary to law, unsupported by substantial evidence and against the manifest weight of evidence. As the Order states, BOMA proposed that if Staff's rate mitigation plan is adopted the Commission should order ComEd to include a separate

subgroup for all nonresidential space heating customers under 3 MW in its implementation of the plan. (Order, pg. 232). However, while the Order states that BOMA's proposal should be adopted in order to protect nonresidential space heating customers from unreasonably large rate increases, the Order limits the application of Staff's rate mitigation plan to only those nonresidential space heating customers eligible for the CPP-B auction product (i.e., customers with less than 400 kW of peak demand). (Order, pg. 234).

The record in this case is clear: all nonresidential space heating customers with less than 3MW of peak demand will face rate shock from a rate increase of between 27.2% (at an auction price of 5 cents per kilowatt-hour ("kWh")) and 46.5% (at an auction price of 6 cents per kWh) in 2007 if a rate mitigation plan is not adopted for these customers. (BOMA Ex. 2.1). Moreover, the record in this case also establishes that the rate increase for nonresidential space heating customers will be 10.7% greater than the increase for nonresidential, non-space heating customers in the absence of mitigation of the rate increase. (BOMA Corr. Ex. 4.0, pg. 3, ll. 51-56).

The Order's conclusion to exclude nonresidential space heating customers between 400 kW and 3 MW of peak demand from the implementation of Staff's rate mitigation plan is not supported by substantial evidence and contrary to the manifest weight of evidence because the record unequivocally establishes that these customers will experience massive rate shock unless Staff's rate mitigation plan is applied to these customers. This conclusion of the Order is also contrary to law because it is not just and reasonable for rates to cause the type of massive rate shock which will occur for 400 kW-3 MW nonresidential space heating customers if Staff's rate mitigation plan is not applied to these customers. (220 ILCS 5/9-201). Accordingly, BOMA requests that the Order be revised so that all nonresidential space heating customers with less than 3 MW of peak demand are included as a separate subgroup in implementing Staff's rate mitigation plan.

CONCLUSION

WHEREFORE, for the above-stated reasons, BOMA respectfully requests that the Commission grant BOMA's Petition for Rehearing and Reconsideration and revise the Order as requested herein.

Respectfully submitted,

BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO

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DATE: February 23, 2006

Attachments:

Attachment A – Illinois Attorney General Exhibit 1.6, pp. 15-16, Results of the "Fixed Price" New Jersey Auctions